

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

OCT 25 2012

JULIA C. DUDLEY, CLERK
BY: H. McDonald
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GREGORY D. GRAVES,
Petitioner,

Civil Action No. 7:12 -cv-00503

v.


MEMORANDUM OPINION

DEPARTMENT OF CORRECTIONS,
Respondent.

By: Hon. Jackson L. Kiser
Senior United States District Judge

Gregory D. Graves, a Virginia inmate proceeding pro se, filed a request for an evidentiary hearing, which I construe as a petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging his May 4, 2000, judgments entered by the Circuit Court of the City of Danville for statutory burglary, attempted rape, and attempted sodomy. Court records indicate that petitioner previously filed a § 2254 petition about the same convictions in Civil Action No. 7:03-cv-00255. Thus, petitioner's current petition is a subsequent one, falling under the prohibition in 28 U.S.C. § 2244(b) against a second or successive petition. Pursuant to this section, a federal district court may consider a second or successive § 2254 petition only upon specific certification from a United States Court of Appeals that claims in the subsequent petition meet certain criteria. 28 U.S.C. § 2244(b). Because petitioner has not submitted any evidence that he has obtained such certification by the Fourth Circuit Court of Appeals, I dismiss the petition without prejudice as successive. Based upon the finding that the petitioner has not made the requisite substantial showing of a denial of a constitutional right as required by 28 U.S.C. § 2253(c), a certificate of appealability is denied. The Clerk is directed to send copies of this Memorandum Opinion and the accompanying Order to petitioner.

ENTER: This 25th day of October, 2012.


Senior United States District Judge